

SSB 6162 - S AMD 532
By Senator Carrell

NOT ADOPTED 04/25/2009

1 On page 4, after line 8, insert the following:

2 "Sec. 3. RCW 9.94A.030 and 2009 c . . . (ESSB 5288) s 4 are each
3 amended to read as follows:

4 Unless the context clearly requires otherwise, the definitions in
5 this section apply throughout this chapter.

6 (1) "Board" means the indeterminate sentence review board created
7 under chapter 9.95 RCW.

8 (2) "Collect," or any derivative thereof, "collect and remit," or
9 "collect and deliver," when used with reference to the department,
10 means that the department, either directly or through a collection
11 agreement authorized by RCW 9.94A.760, is responsible for monitoring
12 and enforcing the offender's sentence with regard to the legal
13 financial obligation, receiving payment thereof from the offender, and,
14 consistent with current law, delivering daily the entire payment to the
15 superior court clerk without depositing it in a departmental account.

16 (3) "Commission" means the sentencing guidelines commission.

17 (4) "Community corrections officer" means an employee of the
18 department who is responsible for carrying out specific duties in
19 supervision of sentenced offenders and monitoring of sentence
20 conditions.

21 (5) "Community custody" means that portion of an offender's
22 sentence of confinement in lieu of earned release time or imposed as
23 part of a sentence under this chapter and served in the community
24 subject to controls placed on the offender's movement and activities by
25 the department.

26 (6) "Community custody range" means the minimum and maximum period
27 of community custody included as part of a sentence under RCW
28 9.94A.701, as established by the commission or the legislature under
29 RCW 9.94A.850.

1 (7) "Community protection zone" means the area within eight hundred
2 eighty feet of the facilities and grounds of a public or private
3 school.

4 ~~((+7))~~ (8) "Community restitution" means compulsory service,
5 without compensation, performed for the benefit of the community by the
6 offender.

7 ~~((+8))~~ (9) "Confinement" means total or partial confinement.

8 ~~((+9))~~ (10) "Conviction" means an adjudication of guilt pursuant
9 to Title 10 or 13 RCW and includes a verdict of guilty, a finding of
10 guilty, and acceptance of a plea of guilty.

11 ~~((+10))~~ (11) "Crime-related prohibition" means an order of a court
12 prohibiting conduct that directly relates to the circumstances of the
13 crime for which the offender has been convicted, and shall not be
14 construed to mean orders directing an offender affirmatively to
15 participate in rehabilitative programs or to otherwise perform
16 affirmative conduct. However, affirmative acts necessary to monitor
17 compliance with the order of a court may be required by the department.

18 ~~((+11))~~ (12) "Criminal history" means the list of a defendant's
19 prior convictions and juvenile adjudications, whether in this state, in
20 federal court, or elsewhere.

21 (a) The history shall include, where known, for each conviction (i)
22 whether the defendant has been placed on probation and the length and
23 terms thereof; and (ii) whether the defendant has been incarcerated and
24 the length of incarceration.

25 (b) A conviction may be removed from a defendant's criminal history
26 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
27 a similar out-of-state statute, or if the conviction has been vacated
28 pursuant to a governor's pardon.

29 (c) The determination of a defendant's criminal history is distinct
30 from the determination of an offender score. A prior conviction that
31 was not included in an offender score calculated pursuant to a former
32 version of the sentencing reform act remains part of the defendant's
33 criminal history.

34 ~~((+12))~~ (13) "Criminal street gang" means any ongoing
35 organization, association, or group of three or more persons, whether
36 formal or informal, having a common name or common identifying sign or
37 symbol, having as one of its primary activities the commission of
38 criminal acts, and whose members or associates individually or

1 collectively engage in or have engaged in a pattern of criminal street
2 gang activity. This definition does not apply to employees engaged in
3 concerted activities for their mutual aid and protection, or to the
4 activities of labor and bona fide nonprofit organizations or their
5 members or agents.

6 ~~((+13+))~~ (14) "Criminal street gang associate or member" means any
7 person who actively participates in any criminal street gang and who
8 intentionally promotes, furthers, or assists in any criminal act by the
9 criminal street gang.

10 ~~((+14+))~~ (15) "Criminal street gang-related offense" means any
11 felony or misdemeanor offense, whether in this state or elsewhere, that
12 is committed for the benefit of, at the direction of, or in association
13 with any criminal street gang, or is committed with the intent to
14 promote, further, or assist in any criminal conduct by the gang, or is
15 committed for one or more of the following reasons:

16 (a) To gain admission, prestige, or promotion within the gang;

17 (b) To increase or maintain the gang's size, membership, prestige,
18 dominance, or control in any geographical area;

19 (c) To exact revenge or retribution for the gang or any member of
20 the gang;

21 (d) To obstruct justice, or intimidate or eliminate any witness
22 against the gang or any member of the gang;

23 (e) To directly or indirectly cause any benefit, aggrandizement,
24 gain, profit, or other advantage for the gang, its reputation,
25 influence, or membership; or

26 (f) To provide the gang with any advantage in, or any control or
27 dominance over any criminal market sector, including, but not limited
28 to, manufacturing, delivering, or selling any controlled substance
29 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
30 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
31 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
32 (chapter 9.68 RCW).

33 ~~((+15+))~~ (16) "Day fine" means a fine imposed by the sentencing
34 court that equals the difference between the offender's net daily
35 income and the reasonable obligations that the offender has for the
36 support of the offender and any dependents.

37 ~~((+16+))~~ (17) "Day reporting" means a program of enhanced
38 supervision designed to monitor the offender's daily activities and

1 compliance with sentence conditions, and in which the offender is
2 required to report daily to a specific location designated by the
3 department or the sentencing court.

4 ~~((+17))~~ (18) "Department" means the department of corrections.

5 ~~((+18))~~ (19) "Determinate sentence" means a sentence that states
6 with exactitude the number of actual years, months, or days of total
7 confinement, of partial confinement, of community custody, the number
8 of actual hours or days of community restitution work, or dollars or
9 terms of a legal financial obligation. The fact that an offender
10 through earned release can reduce the actual period of confinement
11 shall not affect the classification of the sentence as a determinate
12 sentence.

13 ~~((+19))~~ (20) "Disposable earnings" means that part of the earnings
14 of an offender remaining after the deduction from those earnings of any
15 amount required by law to be withheld. For the purposes of this
16 definition, "earnings" means compensation paid or payable for personal
17 services, whether denominated as wages, salary, commission, bonuses, or
18 otherwise, and, notwithstanding any other provision of law making the
19 payments exempt from garnishment, attachment, or other process to
20 satisfy a court-ordered legal financial obligation, specifically
21 includes periodic payments pursuant to pension or retirement programs,
22 or insurance policies of any type, but does not include payments made
23 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
24 or Title 74 RCW.

25 ~~((+20))~~ (21) "Drug offender sentencing alternative" is a
26 sentencing option available to persons convicted of a felony offense
27 other than a violent offense or a sex offense and who are eligible for
28 the option under RCW 9.94A.660.

29 ~~((+21))~~ (22) "Drug offense" means:

30 (a) Any felony violation of chapter 69.50 RCW except possession of
31 a controlled substance (RCW 69.50.4013) or forged prescription for a
32 controlled substance (RCW 69.50.403);

33 (b) Any offense defined as a felony under federal law that relates
34 to the possession, manufacture, distribution, or transportation of a
35 controlled substance; or

36 (c) Any out-of-state conviction for an offense that under the laws
37 of this state would be a felony classified as a drug offense under (a)
38 of this subsection.

1 ~~((+22+))~~ (23) "Earned release" means earned release from
2 confinement as provided in RCW 9.94A.728.

3 ~~((+23+))~~ (24) "Escape" means:

4 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
5 first degree (RCW 9A.76.110), escape in the second degree (RCW
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
7 willful failure to return from work release (RCW 72.65.070), or willful
8 failure to be available for supervision by the department while in
9 community custody (RCW 72.09.310); or

10 (b) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as an escape
12 under (a) of this subsection.

13 ~~((+24+))~~ (25) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
15 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
16 run injury-accident (RCW 46.52.020(4)), felony driving while under the
17 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
18 felony physical control of a vehicle while under the influence of
19 intoxicating liquor or any drug (RCW 46.61.504(6)); or

20 (b) Any federal or out-of-state conviction for an offense that
21 under the laws of this state would be a felony classified as a felony
22 traffic offense under (a) of this subsection.

23 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the
24 sentencing court to be paid by the offender to the court over a
25 specific period of time.

26 ~~((+26+))~~ (27) "First-time offender" means any person who has no
27 prior convictions for a felony and is eligible for the first-time
28 offender waiver under RCW 9.94A.650.

29 ~~((+27+))~~ (28) "Home detention" means a program of partial
30 confinement available to offenders wherein the offender is confined in
31 a private residence subject to electronic surveillance.

32 ~~((+28+))~~ (29) "Legal financial obligation" means a sum of money
33 that is ordered by a superior court of the state of Washington for
34 legal financial obligations which may include restitution to the
35 victim, statutorily imposed crime victims' compensation fees as
36 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
37 drug funds, court-appointed attorneys' fees, and costs of defense,
38 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for
2 vehicular assault while under the influence of intoxicating liquor or
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
5 legal financial obligations may also include payment to a public agency
6 of the expense of an emergency response to the incident resulting in
7 the conviction, subject to RCW 38.52.430.

8 ~~((+29))~~ (30) "Most serious offense" means any of the following
9 felonies or a felony attempt to commit any of the following felonies:

10 (a) Any felony defined under any law as a class A felony or
11 criminal solicitation of or criminal conspiracy to commit a class A
12 felony;

13 (b) Assault in the second degree;

14 (c) Assault of a child in the second degree;

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

18 (g) Incest when committed against a child under age fourteen;

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

28 (q) Vehicular assault, when caused by the operation or driving of
29 a vehicle by a person while under the influence of intoxicating liquor
30 or any drug or by the operation or driving of a vehicle in a reckless
31 manner;

32 (r) Vehicular homicide, when proximately caused by the driving of
33 any vehicle by any person while under the influence of intoxicating
34 liquor or any drug as defined by RCW 46.61.502, or by the operation of
35 any vehicle in a reckless manner;

36 (s) Any other class B felony offense with a finding of sexual
37 motivation;

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

8 (v)(i) A prior conviction for indecent liberties under RCW
9 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
10 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
11 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
12 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

13 (ii) A prior conviction for indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
15 if: (A) The crime was committed against a child under the age of
16 fourteen; or (B) the relationship between the victim and perpetrator is
17 included in the definition of indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
20 through July 27, 1997;

21 (w) Any out-of-state conviction for a felony offense with a finding
22 of sexual motivation if the minimum sentence imposed was ten years or
23 more; provided that the out-of-state felony offense must be comparable
24 to a felony offense under Title 9 or 9A RCW and the out-of-state
25 definition of sexual motivation must be comparable to the definition of
26 sexual motivation contained in this section.

27 ~~((+30))~~ (31) "Nonviolent offense" means an offense which is not a
28 violent offense.

29 ~~((+31))~~ (32) "Offender" means a person who has committed a felony
30 established by state law and is eighteen years of age or older or is
31 less than eighteen years of age but whose case is under superior court
32 jurisdiction under RCW 13.04.030 or has been transferred by the
33 appropriate juvenile court to a criminal court pursuant to RCW
34 13.40.110. In addition, for the purpose of community custody
35 requirements under this chapter, "offender" also means a misdemeanor or
36 gross misdemeanor probationer convicted of an offense included in RCW
37 9.94A.501(1) and ordered by a superior court to probation under the

1 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
2 9.95.210. Throughout this chapter, the terms "offender" and
3 "defendant" are used interchangeably.

4 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more
5 than one year in a facility or institution operated or utilized under
6 contract by the state or any other unit of government, or, if home
7 detention or work crew has been ordered by the court, in an approved
8 residence, for a substantial portion of each day with the balance of
9 the day spent in the community. Partial confinement includes work
10 release, home detention, work crew, and a combination of work crew and
11 home detention.

12 ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:

13 (a) The commission, attempt, conspiracy, or solicitation of, or any
14 prior juvenile adjudication of or adult conviction of, two or more of
15 the following criminal street gang-related offenses:

16 (i) Any "serious violent" felony offense as defined in this
17 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
18 Child 1 (RCW 9A.36.120);

19 (ii) Any "violent" offense as defined by this section, excluding
20 Assault of a Child 2 (RCW 9A.36.130);

21 (iii) Deliver or Possession with Intent to Deliver a Controlled
22 Substance (chapter 69.50 RCW);

23 (iv) Any violation of the firearms and dangerous weapon act
24 (chapter 9.41 RCW);

25 (v) Theft of a Firearm (RCW 9A.56.300);

26 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

27 (vii) Malicious Harassment (RCW 9A.36.080);

28 (viii) Harassment where a subsequent violation or deadly threat is
29 made (RCW 9A.46.020(2)(b));

30 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

31 (x) Any felony conviction by a person eighteen years of age or
32 older with a special finding of involving a juvenile in a felony
33 offense under RCW 9.94A.833;

34 (xi) Residential Burglary (RCW 9A.52.025);

35 (xii) Burglary 2 (RCW 9A.52.030);

36 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

37 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

38 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

1 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
2 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
3 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
4 9A.56.075);
5 (xix) Extortion 1 (RCW 9A.56.120);
6 (xx) Extortion 2 (RCW 9A.56.130);
7 (xxi) Intimidating a Witness (RCW 9A.72.110);
8 (xxii) Tampering with a Witness (RCW 9A.72.120);
9 (xxiii) Reckless Endangerment (RCW 9A.36.050);
10 (xxiv) Coercion (RCW 9A.36.070);
11 (xxv) Harassment (RCW 9A.46.020); or
12 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
13 (b) That at least one of the offenses listed in (a) of this
14 subsection shall have occurred after July 1, 2008;
15 (c) That the most recent committed offense listed in (a) of this
16 subsection occurred within three years of a prior offense listed in (a)
17 of this subsection; and
18 (d) Of the offenses that were committed in (a) of this subsection,
19 the offenses occurred on separate occasions or were committed by two or
20 more persons.
21 (~~(34)~~) (35) "Persistent offender" is an offender who:
22 (a)(i) Has been convicted in this state of any felony considered a
23 most serious offense; and
24 (ii) Has, before the commission of the offense under (a) of this
25 subsection, been convicted as an offender on at least two separate
26 occasions, whether in this state or elsewhere, of felonies that under
27 the laws of this state would be considered most serious offenses and
28 would be included in the offender score under RCW 9.94A.525; provided
29 that of the two or more previous convictions, at least one conviction
30 must have occurred before the commission of any of the other most
31 serious offenses for which the offender was previously convicted; or
32 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
33 of a child in the first degree, child molestation in the first degree,
34 rape in the second degree, rape of a child in the second degree, or
35 indecent liberties by forcible compulsion; (B) any of the following
36 offenses with a finding of sexual motivation: Murder in the first
37 degree, murder in the second degree, homicide by abuse, kidnapping in
38 the first degree, kidnapping in the second degree, assault in the first

1 degree, assault in the second degree, assault of a child in the first
2 degree, assault of a child in the second degree, or burglary in the
3 first degree; or (C) an attempt to commit any crime listed in this
4 subsection (~~(+34+)~~) (35)(b)(i); and

5 (ii) Has, before the commission of the offense under (b)(i) of this
6 subsection, been convicted as an offender on at least one occasion,
7 whether in this state or elsewhere, of an offense listed in (b)(i) of
8 this subsection or any federal or out-of-state offense or offense under
9 prior Washington law that is comparable to the offenses listed in
10 (b)(i) of this subsection. A conviction for rape of a child in the
11 first degree constitutes a conviction under (b)(i) of this subsection
12 only when the offender was sixteen years of age or older when the
13 offender committed the offense. A conviction for rape of a child in
14 the second degree constitutes a conviction under (b)(i) of this
15 subsection only when the offender was eighteen years of age or older
16 when the offender committed the offense.

17 (~~(+35+)~~) (36) "Predatory" means: (a) The perpetrator of the crime
18 was a stranger to the victim, as defined in this section; (b) the
19 perpetrator established or promoted a relationship with the victim
20 prior to the offense and the victimization of the victim was a
21 significant reason the perpetrator established or promoted the
22 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
23 volunteer, or other person in authority in any public or private school
24 and the victim was a student of the school under his or her authority
25 or supervision. For purposes of this subsection, "school" does not
26 include home-based instruction as defined in RCW 28A.225.010; (ii) a
27 coach, trainer, volunteer, or other person in authority in any
28 recreational activity and the victim was a participant in the activity
29 under his or her authority or supervision; or (iii) a pastor, elder,
30 volunteer, or other person in authority in any church or religious
31 organization, and the victim was a member or participant of the
32 organization under his or her authority.

33 (~~(+36+)~~) (37) "Private school" means a school regulated under
34 chapter 28A.195 or 28A.205 RCW.

35 (~~(+37+)~~) (38) "Public school" has the same meaning as in RCW
36 28A.150.010.

37 (~~(+38+)~~) (39) "Restitution" means a specific sum of money ordered

1 by the sentencing court to be paid by the offender to the court over a
2 specified period of time as payment of damages. The sum may include
3 both public and private costs.

4 ~~((+39+))~~ (40) "Risk assessment" means the application of the risk
5 instrument recommended to the department by the Washington state
6 institute for public policy as having the highest degree of predictive
7 accuracy for assessing an offender's risk of reoffense.

8 ~~((+40+))~~ (41) "Serious traffic offense" means:

9 (a) Nonfelony driving while under the influence of intoxicating
10 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
11 while under the influence of intoxicating liquor or any drug (RCW
12 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
13 attended vehicle (RCW 46.52.020(5)); or

14 (b) Any federal, out-of-state, county, or municipal conviction for
15 an offense that under the laws of this state would be classified as a
16 serious traffic offense under (a) of this subsection.

17 ~~((+41+))~~ (42) "Serious violent offense" is a subcategory of violent
18 offense and means:

- 19 (a)(i) Murder in the first degree;
- 20 (ii) Homicide by abuse;
- 21 (iii) Murder in the second degree;
- 22 (iv) Manslaughter in the first degree;
- 23 (v) Assault in the first degree;
- 24 (vi) Kidnapping in the first degree;
- 25 (vii) Rape in the first degree;
- 26 (viii) Assault of a child in the first degree; or
- 27 (ix) An attempt, criminal solicitation, or criminal conspiracy to
28 commit one of these felonies; or

29 (b) Any federal or out-of-state conviction for an offense that
30 under the laws of this state would be a felony classified as a serious
31 violent offense under (a) of this subsection.

32 ~~((+42+))~~ (43) "Sex offense" means:

- 33 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
34 RCW 9A.44.130(12);
- 35 (ii) A violation of RCW 9A.64.020;
- 36 (iii) A felony that is a violation of chapter 9.68A RCW other than
37 RCW 9.68A.080; or

1 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
2 criminal solicitation, or criminal conspiracy to commit such crimes;

3 (b) Any conviction for a felony offense in effect at any time prior
4 to July 1, 1976, that is comparable to a felony classified as a sex
5 offense in (a) of this subsection;

6 (c) A felony with a finding of sexual motivation under RCW
7 9.94A.835 or 13.40.135; or

8 (d) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a sex
10 offense under (a) of this subsection.

11 ~~((43))~~ (44) "Sexual motivation" means that one of the purposes
12 for which the defendant committed the crime was for the purpose of his
13 or her sexual gratification.

14 ~~((44))~~ (45) "Standard sentence range" means the sentencing
15 court's discretionary range in imposing a nonappealable sentence.

16 ~~((45))~~ (46) "Statutory maximum sentence" means the maximum length
17 of time for which an offender may be confined as punishment for a crime
18 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
19 the crime, or other statute defining the maximum penalty for a crime.

20 ~~((46))~~ (47) "Stranger" means that the victim did not know the
21 offender twenty-four hours before the offense.

22 ~~((47))~~ (48) "Total confinement" means confinement inside the
23 physical boundaries of a facility or institution operated or utilized
24 under contract by the state or any other unit of government for twenty-
25 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

26 ~~((48))~~ (49) "Transition training" means written and verbal
27 instructions and assistance provided by the department to the offender
28 during the two weeks prior to the offender's successful completion of
29 the work ethic camp program. The transition training shall include
30 instructions in the offender's requirements and obligations during the
31 offender's period of community custody.

32 ~~((49))~~ (50) "Victim" means any person who has sustained
33 emotional, psychological, physical, or financial injury to person or
34 property as a direct result of the crime charged.

35 ~~((50))~~ (51) "Violent offense" means:

36 (a) Any of the following felonies:

37 (i) Any felony defined under any law as a class A felony or an
38 attempt to commit a class A felony;

1 (ii) Criminal solicitation of or criminal conspiracy to commit a
2 class A felony;

3 (iii) Manslaughter in the first degree;

4 (iv) Manslaughter in the second degree;

5 (v) Indecent liberties if committed by forcible compulsion;

6 (vi) Kidnapping in the second degree;

7 (vii) Arson in the second degree;

8 (viii) Assault in the second degree;

9 (ix) Assault of a child in the second degree;

10 (x) Extortion in the first degree;

11 (xi) Robbery in the second degree;

12 (xii) Drive-by shooting;

13 (xiii) Vehicular assault, when caused by the operation or driving
14 of a vehicle by a person while under the influence of intoxicating
15 liquor or any drug or by the operation or driving of a vehicle in a
16 reckless manner; and

17 (xiv) Vehicular homicide, when proximately caused by the driving of
18 any vehicle by any person while under the influence of intoxicating
19 liquor or any drug as defined by RCW 46.61.502, or by the operation of
20 any vehicle in a reckless manner;

21 (b) Any conviction for a felony offense in effect at any time prior
22 to July 1, 1976, that is comparable to a felony classified as a violent
23 offense in (a) of this subsection; and

24 (c) Any federal or out-of-state conviction for an offense that
25 under the laws of this state would be a felony classified as a violent
26 offense under (a) or (b) of this subsection.

27 ((+51+)) (52) "Work crew" means a program of partial confinement
28 consisting of civic improvement tasks for the benefit of the community
29 that complies with RCW 9.94A.725.

30 ((+52+)) (53) "Work ethic camp" means an alternative incarceration
31 program as provided in RCW 9.94A.690 designed to reduce recidivism and
32 lower the cost of corrections by requiring offenders to complete a
33 comprehensive array of real-world job and vocational experiences,
34 character-building work ethics training, life management skills
35 development, substance abuse rehabilitation, counseling, literacy
36 training, and basic adult education.

37 ((+53+)) (54) "Work release" means a program of partial confinement

1 available to offenders who are employed or engaged as a student in a
2 regular course of study at school.

3 **Sec. 4.** RCW 9.94A.701 and 2009 c . . . (ESSB 5288) s 5 are each
4 amended to read as follows:

5 (1) If an offender is sentenced to the custody of the department
6 for one of the following crimes, the court shall(~~(, in addition to the~~
7 ~~other terms of the sentence, sentence the offender to community custody~~
8 ~~for three years)) impose a term of community custody for the community
9 custody range established under RCW 9.94A.850:~~

10 (a) A sex offense not sentenced under RCW 9.94A.507;

11 (b) A (~~serious~~) violent offense; or

12 (c) A violation of RCW 9A.44.130(11)(a) committed on or after June
13 7, 2006, when a court sentences the person to a term of confinement of
14 one year or less.

15 (~~(A court shall, in addition to the other terms of the~~
16 ~~sentence, sentence an offender to community custody for eighteen months~~
17 ~~when the court sentences the person to the custody of the department~~
18 ~~for a violent offense that is not considered a serious violent offense.~~

19 ~~(3))~~ A court shall, in addition to the other terms of the
20 sentence, sentence an offender to community custody for one year when
21 the court sentences the person to the custody of the department for:

22 (a) Any crime against persons under RCW 9.94A.411(2);

23 (b) An offense involving the unlawful possession of a firearm under
24 RCW 9.41.040, where the offender is a criminal street gang member or
25 associate; or

26 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed on
27 or after July 1, 2000.

28 (~~(4))~~ (3) If an offender is sentenced under the drug offender
29 sentencing alternative, the court shall impose community custody as
30 provided in RCW 9.94A.660.

31 (~~(5))~~ (4) If an offender is sentenced under the special sexual
32 offender sentencing alternative, the court shall impose community
33 custody as provided in RCW 9.94A.670.

34 (~~(6))~~ (5) If an offender is sentenced to a work ethic camp, the
35 court shall impose community custody as provided in RCW 9.94A.690.

36 (~~(7))~~ (6) If a sex offender is sentenced as a nonpersistent

1 offender pursuant to RCW 9.94A.507, the court shall impose community
2 custody as provided in that section.

3 ((+8)) (7) The term of community custody specified by this section
4 shall be reduced by the court whenever an offender's standard range
5 term of confinement in combination with the term of community custody
6 exceeds the statutory maximum for the crime as provided in RCW
7 9A.20.021.

8 **Sec. 5.** RCW 9.94A.704 and 2009 c . . . (ESSB 5288) s 6 are each
9 amended to read as follows:

10 (1) Every person who is sentenced to a period of community custody
11 shall report to and be placed under the supervision of the department,
12 subject to RCW 9.94A.501.

13 (2)(a) The department shall assess the offender's risk of reoffense
14 and may establish and modify additional conditions of community custody
15 based upon the risk to community safety.

16 (b) Within the funds available for community custody, the
17 department shall determine conditions and the duration of community
18 custody when the offender is sentenced to a community custody range on
19 the basis of risk to community safety, and shall supervise offenders
20 during community custody on the basis of risk to community safety and
21 conditions imposed by the court. The secretary shall adopt rules to
22 implement the provisions of this subsection (2)(b).

23 (3) If the offender is supervised by the department, the department
24 shall at a minimum instruct the offender to:

- 25 (a) Report as directed to a community corrections officer;
- 26 (b) Remain within prescribed geographical boundaries;
- 27 (c) Notify the community corrections officer of any change in the
28 offender's address or employment;
- 29 (d) Pay the supervision fee assessment; and
- 30 (e) Disclose the fact of supervision to any mental health or
31 chemical dependency treatment provider, as required by RCW 9.94A.722.

32 (4) The department may require the offender to participate in
33 rehabilitative programs, or otherwise perform affirmative conduct, and
34 to obey all laws.

35 (5) If the offender was sentenced pursuant to a conviction for a
36 sex offense, the department may impose electronic monitoring. Within
37 the resources made available by the department for this purpose, the

1 department shall carry out any electronic monitoring using the most
2 appropriate technology given the individual circumstances of the
3 offender. As used in this section, "electronic monitoring" means the
4 monitoring of an offender using an electronic offender tracking system
5 including, but not limited to, a system using radio frequency or active
6 or passive global positioning system technology.

7 (6) The department may not impose conditions that are contrary to
8 those ordered by the court and may not contravene or decrease court-
9 imposed conditions.

10 (7)(a) The department shall notify the offender in writing of any
11 additional conditions or modifications.

12 (b) By the close of the next business day after receiving notice of
13 a condition imposed or modified by the department, an offender may
14 request an administrative review under rules adopted by the department.
15 The condition shall remain in effect unless the reviewing officer finds
16 that it is not reasonably related to the crime of conviction, the
17 offender's risk of reoffending, or the safety of the community.

18 (8) The department may require offenders to pay for special
19 services rendered including electronic monitoring, day reporting, and
20 telephone reporting, dependent on the offender's ability to pay. The
21 department may pay for these services for offenders who are not able to
22 pay.

23 (9)(a) When a sex offender has been sentenced pursuant to RCW
24 9.94A.507, the department shall assess the offender's risk of
25 recidivism and shall recommend to the board any additional or modified
26 conditions based upon the offender's risk to community safety and may
27 recommend affirmative conduct or electronic monitoring consistent with
28 subsections (4) through (6) of this section.

29 (b) The board may impose conditions in addition to court-ordered
30 conditions. The board must consider and may impose department-
31 recommended conditions.

32 (c) By the close of the next business day, after receiving notice
33 of a condition imposed by the board or the department, an offender may
34 request an administrative hearing under rules adopted by the board.
35 The condition shall remain in effect unless the hearing examiner finds
36 that it is not reasonably related to any of the following:

37 (i) The crime of conviction;

38 (ii) The offender's risk of reoffending;

1 (iii) The safety of the community.

2 (d) If the department finds that an emergency exists requiring the
3 immediate imposition of additional conditions in order to prevent the
4 offender from committing a crime, the department may impose such
5 conditions. The department may not impose conditions that are contrary
6 to those set by the board or the court and may not contravene or
7 decrease court-imposed or board-imposed conditions. Conditions imposed
8 under this subsection shall take effect immediately after notice to the
9 offender by personal service, but shall not remain in effect longer
10 than seven working days unless approved by the board.

11 (10) In setting, modifying, and enforcing conditions of community
12 custody, the department shall be deemed to be performing a
13 quasi-judicial function.

14 **Sec. 6.** RCW 9.94A.707 and 2009 c . . . (ESSB 5288) s 7 are each
15 amended to read as follows:

16 (1) Community custody shall begin: (a) Upon completion of the term
17 of confinement; or (b) at the time of sentencing if no term of
18 confinement is ordered.

19 (2) When an offender is sentenced to community custody, the
20 offender is subject to the conditions of community custody as of the
21 date of sentencing, unless otherwise ordered by the court.

22 (3) When an offender is sentenced to a community custody range
23 pursuant to RCW 9.94A.701(1), the department shall discharge the
24 offender from community custody on a date determined by the department,
25 which the department may modify, based on risk and performance of the
26 offender, within the range or at the end of the period of earned
27 release, whichever is later.

28 **Sec. 7.** RCW 9.94A.850 and 2009 c . . . (ESSB 5288) s 8 are each
29 amended to read as follows:

30 (1) A sentencing guidelines commission is established as an agency
31 of state government.

32 (2) The legislature finds that the commission, having accomplished
33 its original statutory directive to implement this chapter, and having
34 expertise in sentencing practice and policies, shall:

35 (a) Evaluate state sentencing policy, to include whether the
36 sentencing ranges and standards are consistent with and further:

1 (i) The purposes of this chapter as defined in RCW 9.94A.010; and
2 (ii) The intent of the legislature to emphasize confinement for the
3 violent offender and alternatives to confinement for the nonviolent
4 offender.

5 The commission shall provide the governor and the legislature with
6 its evaluation and recommendations under this subsection not later than
7 December 1, 1996, and every two years thereafter;

8 (b) Recommend to the legislature revisions or modifications to the
9 standard sentence ranges, state sentencing policy, prosecuting
10 standards, and other standards. If implementation of the revisions or
11 modifications would result in exceeding the capacity of correctional
12 facilities, then the commission shall accompany its recommendation with
13 an additional list of standard sentence ranges which are consistent
14 with correction capacity;

15 (c) Study the existing criminal code and from time to time make
16 recommendations to the legislature for modification;

17 (d)(i) Serve as a clearinghouse and information center for the
18 collection, preparation, analysis, and dissemination of information on
19 state and local adult and juvenile sentencing practices; (ii) develop
20 and maintain a computerized adult and juvenile sentencing information
21 system by individual superior court judge consisting of offender,
22 offense, history, and sentence information entered from judgment and
23 sentence forms for all adult felons; and (iii) conduct ongoing research
24 regarding adult and juvenile sentencing guidelines, use of total
25 confinement and alternatives to total confinement, plea bargaining, and
26 other matters relating to the improvement of the adult criminal justice
27 system and the juvenile justice system;

28 (e) Assume the powers and duties of the juvenile disposition
29 standards commission after June 30, 1996;

30 (f) Evaluate the effectiveness of existing disposition standards
31 and related statutes in implementing policies set forth in RCW
32 13.40.010 generally, specifically review the guidelines relating to the
33 confinement of minor and first-time offenders as well as the use of
34 diversion, and review the application of current and proposed juvenile
35 sentencing standards and guidelines for potential adverse impacts on
36 the sentencing outcomes of racial and ethnic minority youth;

37 (g) Solicit the comments and suggestions of the juvenile justice
38 community concerning disposition standards, and make recommendations to

1 the legislature regarding revisions or modifications of the standards.
2 The evaluations shall be submitted to the legislature on December 1 of
3 each odd-numbered year. The department of social and health services
4 shall provide the commission with available data concerning the
5 implementation of the disposition standards and related statutes and
6 their effect on the performance of the department's responsibilities
7 relating to juvenile offenders, and with recommendations for
8 modification of the disposition standards. The administrative office
9 of the courts shall provide the commission with available data on
10 diversion, including the use of youth court programs, and dispositions
11 of juvenile offenders under chapter 13.40 RCW; and

12 (h) Not later than December 1, 1997, and at least every two years
13 thereafter, based on available information, report to the governor and
14 the legislature on:

15 (i) Racial disproportionality in juvenile and adult sentencing,
16 and, if available, the impact that diversions, such as youth courts,
17 have on racial disproportionality in juvenile prosecution,
18 adjudication, and sentencing;

19 (ii) The capacity of state and local juvenile and adult facilities
20 and resources; and

21 (iii) Recidivism information on adult and juvenile offenders.

22 (3) Each of the commission's recommended standard sentence ranges
23 shall include one or more of the following: Total confinement, partial
24 confinement, community supervision, community restitution, and a fine.

25 (4) The standard sentence ranges of total and partial confinement
26 under this chapter, except as provided in RCW 9.94A.517, are subject to
27 the following limitations:

28 (a) If the maximum term in the range is one year or less, the
29 minimum term in the range shall be no less than one-third of the
30 maximum term in the range, except that if the maximum term in the range
31 is ninety days or less, the minimum term may be less than one-third of
32 the maximum;

33 (b) If the maximum term in the range is greater than one year, the
34 minimum term in the range shall be no less than seventy-five percent of
35 the maximum term in the range, except that for murder in the second
36 degree in seriousness level XIV under RCW 9.94A.510, the minimum term
37 in the range shall be no less than fifty percent of the maximum term in
38 the range; and

1 (c) The maximum term of confinement in a range may not exceed the
2 statutory maximum for the crime as provided in RCW 9A.20.021.

3 (5)(a) Not later than December 31 of each year, the commission may
4 propose modifications to the community custody ranges to be included in
5 sentences under RCW 9.94A.701(1). The ranges shall be based on the
6 principles in RCW 9.94A.010, and shall take into account the funds
7 available to the department for community custody. The minimum term in
8 each range shall not be less than one-half of the maximum term.

9 (b) The legislature may, by enactment of a legislative bill, adopt
10 or modify the community custody ranges proposed by the commission. If
11 the legislature fails to adopt or modify the initial ranges in its next
12 regular session after they are proposed, the proposed ranges shall take
13 effect without legislative approval for crimes committed on or after
14 July 1, 2000.

15 (c) When the commission proposes modifications to ranges pursuant
16 to this subsection, the legislature may, by enactment of a bill, adopt
17 or modify the ranges proposed by the commission for crimes committed on
18 or after July 1 of the year after they were proposed. Unless the
19 legislature adopts or modifies the commission's proposal in its next
20 regular session, the proposed ranges shall not take effect.

21 (6) The commission shall exercise its duties under this section in
22 conformity with chapter 34.05 RCW.

23 **Sec. 8.** 2009 c . . . (ESSB 5288) s 9 (uncodified) is amended to
24 read as follows:

25 Consistent with the provisions of RCW 9.94A.701(2), the department
26 of corrections shall recalculate the term of community custody and
27 reset the date that community custody will end for each offender
28 currently in confinement or serving a term of community custody for a
29 crime specified in RCW 9.94A.701(2). The recalculation shall not
30 extend a term of community custody beyond that to which an offender is
31 currently subject."

32 Renumber the remaining sections consecutively and correct any
33 internal references accordingly.

34 On page 4, line 14, after "(2)" strike "Section 2" and insert
35 "Sections 2 through 8"

NOT ADOPTED 04/25/2009

1 On page 1, beginning on line 2 of the title, after "custody" strike
2 the remainder of the title and insert "when the offender has a current
3 conviction for a violent offense or a serious violent offense as
4 defined in RCW 9.94A.030; amending RCW 9.94A.501, 9.94A.501, 9.94A.030,
5 9.94A.701, 9.94A.704, 9.94A.707, and 9.94A.850; amending 2009 c . . .
6 (ESSB 5288) s 9 (uncodified), creating a new section; providing an
7 effective date; providing an expiration date; and declaring an
8 emergency."

EFFECT: Restores the community custody ranges amended by ESSB
5288 for offenders convicted of violent or serious violent offenses.

--- END ---